

Commerce Committee

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COMMERCE & ECONOMIC DEVELOPMENT COMMITTEE

LEGISLATION ENACTED

unauthorized use; soldier's name; picture (S.B. 1014) – Chapter 227

Beginning May 24, 2007, establishes a statutory right of publicity for soldiers. Makes a person civilly liable for using the name, portrait or picture of *any* soldier, without prior consent, for specified commercial purposes and classifies as a class 1 misdemeanor knowingly using the name, portrait or picture of a *deceased* soldier, without consent, for specified commercial purposes, with certain exceptions. Enumerates the persons, other than the soldier, who may provide consent and enforce the soldier's rights and remedies after the soldier's death.

~~private investigator licensing; exemption~~ (NOW: exemption; private investigators) (S.B. 1047) – Chapter 96

Modifies the current exemptions from the private investigator statutes to require a person, firm or corporation that engages in investigative research that constitutes an investigative consumer report to comply with all provisions pertaining to private investigators.

workers' compensation; infectious disease; exposure (S.B. 1127) – Chapter 230

Requires a claim by a firefighter, law enforcement officer, corrections officer, probation officer, emergency medical technician or paramedic, who is not employed by a health care institution, for a condition, infection, disease or disability involving or related to methicillin-resistant staphylococcus aureus, spinal meningitis (meningitis) or tuberculosis (TB) to include the occurrence of a significant exposure and to be processed as a workers' compensation claim, unless the employee satisfies specific criteria for a prima facie claim. The employer may produce evidence to dispute the underlying facts of a prima facie claim, to contest whether the exposure was significant or to establish an alternative significant exposure. Stipulates that expenses for postexposure evaluation and follow-up, including reasonably required prophylactic treatment, for meningitis or TB are a medical benefit for a significant exposure; providing postexposure evaluation and follow-up does not constitute acceptance of a workers' compensation claim.

self-service storage agent license (S.B. 1155) – Chapter 50

Permits the Director of the Department of Insurance (Director) to issue a self-service storage agent license to an operator of a storage facility, allowing the operator to sell insurance in connection with and incidental to the rental of space at the facility. The insurance must provide coverage to facility occupants for the loss of or damage to stored personal property. Establishes requirements and prohibitions relating to the sale or offering of insurance by a self-service storage agent and permits the Director to take certain actions against any person who violates these provisions.

~~landlord tenant act amendments~~ (NOW: amendments; landlord tenant act) (S.B. 1255) – Chapter 231

Permits a landlord to request and the tenant to provide the name and contact information of a person who is authorized to retrieve the tenant's property from the tenant's unit if the tenant dies. The measure establishes the guidelines for the retrieval of property and the disposal of property not retrieved. Permits a landlord to use all refundable deposits in accordance with any applicable provisions of the property management agreement during the term of tenancy. Requires a tenant to

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notify the landlord of any situation requiring maintenance or repair and stipulates that this notice allows the landlord to enter the premises, in accordance with specified guidelines, to provide the maintenance.

administrative procedures; exemption (S.B. 1256) – Chapter 55

Exempts the State Compensation Fund from the Arizona Administrative Procedures Act.

state board of appraisal (S.B. 1291) – Chapter 291

Effective July 2, 2007, makes numerous changes pertaining to the State Board of Appraisal (Board), appraisers and property tax agents. The major provisions include:

Board Membership – Permits a person to serve as a member of the Board for more than two consecutive terms under specified circumstances.

Appraiser Licensure and Certification – Exempts from the licensure and certification requirements a person who produces a statement concerning the estimated value of real property through any means of comparative market analysis and discloses that the estimate is not an appraisal. Modifies the experience requirements for original licensure and certification and the continuing education requirements. Prohibits the Board from accepting a renewal application more than 90 days after the expiration of the certificate or license, except that a member of the United States armed forces who is deployed on active duty may apply for renewal up to 180 days after returning home.

Inactive Appraiser Status – Permits a license or certificate holder to request inactive status, during which time the person is not required to fulfill the continuing education requirements. The license or certificate holder must complete the required continuing education and apply for reactivation before resuming appraisal activity. The requirements differ for a member of the armed forces who is deployed on active duty.

Confidential Records – Designates as confidential specified documents pertaining to appraisers and property tax agents, including those associated with a complaint until the complaint is resolved.

~~workers' compensation; medical; prompt payment~~ (NOW: timely medical payments; workers' compensation) (S.B. 1292) – Chapter 217

Requires a workers' compensation carrier (carrier), self-insured employer (employer) or claims processing representative (representative) to determine whether to pay a medical bill on an accepted claim and how much to pay within 30 days after accepting the claim or receiving the billing, whichever occurs later, and requires all denials to be based on reasonable justification. Requires a carrier, employer or representative that does not pay the approved portion of the billing within 30 days after the determination for payment is made to pay interest at the legal rate. A carrier, employer or representative is not required to pay a billing for medical, surgical or hospital benefits that it receives more than 24 months after medical service was rendered or after the health care provider (provider) knew or should have known that service was rendered on an industrial claim, whichever occurs later. This measure does not apply to a provider that enters into an express written contract with the carrier, employer or representative if the contract specifies the time frame within which approved bills must be paid and includes contractual remedies for untimely payment; if the contract does not include remedies for untimely payment, payments must be paid according to the

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contract but the statutory interest penalty applies to late payments. The measure also specifies the information that must be included in a billing.

child care; licensure (NOW: terminology; oriental; asian) (S.B. 1295) – Chapter 102

Replaces the term “Oriental” with “Asian” in each of the statutes in which it appears, except where the term appears as part of the name of a national organization. Intends that agencies, boards, commissions, departments, officers and other administrative units of the state make similar changes to their respective administrative rules.

antifreeze; aversive or bittering agent (S.B. 1323) – Chapter 162

Requires engine coolant (coolant) or antifreeze sold beginning January 1, 2008, that is manufactured beginning September 1, 2007, and that contains more than ten percent ethylene glycol, to include denatonium benzoate (DB) as an aversive or bittering agent and classifies a violation as a class 3 misdemeanor. Specifies application and exceptions. Manufacturers, packagers, distributors, recyclers and sellers of coolant or antifreeze are not liable for damages that result from the inclusion of DB in the specified amounts. Prohibits a political subdivision from establishing or continuing any other requirement relating to the inclusion of an aversive or bittering agent in coolant or antifreeze for retail containers of less than 55 gallons.

department of real estate (S.B. 1349) – Chapter 165

Retroactive to July 1, 2007, makes numerous changes to the Arizona Department of Real Estate (ADRE) statutes concerning licensure, including: 1) changes the duration of a renewal license from two years to four years and modifies the fee range accordingly; 2) requires an entity's broker's license to run concurrently with the corporation's, limited liability company's (LLC) or partnership's designated broker's license; 3) modifies preclosure and continuing education requirements, including the number of hours required for specified courses and the time frame within which certain requirements must be met; and 4) prohibits a professional corporation or professional LLC from being licensed as an employing broker. Additionally, the measure requires a licensed corporation, LLC or partnership to report its dissolution to ADRE within ten days.

Expands the ability of the ADRE Commissioner to assess civil penalties against licensees for violations. Permits the Commissioner, with respect to a school, to suspend or revoke a license, deny issuance or renewal of a license, issue a letter of concern or issue a provisional license for failure to exercise reasonable supervision over the activities for which a license is required.

municipal development fees; procedures (S.B. 1423) – Chapter 136

Makes several changes pertaining to municipal development fees. Permits a municipality to modify, as opposed to only increase, a development fee and to automatically adjust a development fee annually according to an applicable nationally recognizable index. The measure outlines the information that a written report regarding a new or modified fee must contain and modifies the time frame for holding a public hearing on a new or modified fee, for adopting the fee and for the effective date of the fee. Additionally, it requires: 1) the governing body of a municipality to adopt or amend an infrastructure improvements plan (plan) that estimates future necessary public services and associated costs that result from a new development before assessing a new or modified development fee; 2) a municipality to provide a credit toward the payment of a fee for necessary public services that are included in the plan, and for which a fee is assessed, to the extent that the

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services are provided by the developer; 3) an action to collect a development fee to commence within two years after the obligation to pay accrues; and 4) the monies that a municipality collects from a development fee to be used to provide the same category of necessary public service for which the fee was assessed.

~~contractors; license renewal; qualifying party~~ (NOW: amusement rides; safety) (S.B. 1483) – Chapter 232

Requires an amusement ride owner or operator to: 1) have amusement rides inspected annually; 2) procure insurance against liability for injury to persons; 3) maintain at all times the permit for operation that is issued by the municipality or county in which the ride is operated; and 4) maintain, for at least two years, accurate records of any governmental action relating to the ride and of serious injuries actually caused by the ride. Municipalities and counties that elect to administer and enforce these requirements must collect reasonable fees and review specified information before issuing a permit. Knowing disclosure of any record or other information without consent of the owner or a court order, unless otherwise required by law, is a class 3 misdemeanor.

condominium recovery fund (S.B. 1546) – Chapter 221

Requires the Commissioner of the Arizona Department of Real Estate (ADRE) to establish and maintain the Condominium Recovery Fund (Fund) to pay a buyer for losses that arise from a subdivider's failure to complete a condominium project under specified circumstances. Each applicant for a public report for a condominium must pay into the Fund an amount established by the Commissioner if, on June 30 of the previous fiscal year, the Fund balance is less than \$5 million.

Requires an action against a subdivider to be commenced or prosecuted within three years after the cause of action accrues and the aggrieved buyer to apply to the ADRE for payment within two years after the termination of all proceedings that result in a judgment against the subdivider. Prescribes the serving process and notice of a claim on a subdivider and permits a subdivider to contest a claim. Except under certain circumstances, the Commissioner must make a final written decision within 90 calendar days. An applicant whose application is denied may apply to the court, within six months, for an order directing payment.

Prohibits an award from the Fund from exceeding 20 percent of the base price for each unit and \$1 million for each condominium project, regardless of the number of aggrieved buyers or units involved, and permits the Commissioner to petition the court to initiate a proration proceeding, if necessary. Requires the automatic termination of a subdivider's public report for a condominium on the issuance of an order authorizing payment, pending repayment plus interest. The applicant, before receiving payment, must assign all the rights, title and interest in the judgment to the Commissioner.

Specifies that an aggrieved person who does not comply with any provision of this measure is waived of any rights under the measure and permits the Commissioner to act on behalf of the Fund.

~~trustee sales; notice~~ (NOW: job training; extension; prohibitions) (S.B. 1571) – Chapter 293

Delays, until January 1, 2012, the repeal of the Arizona Job Training Program (Program) and modifies the membership of the Governor's Council on Workforce Policy. Prohibits the Arizona Department of Commerce (ADOC) from approving grant monies from the Arizona Job Training Fund for specified purposes and allows the monies that are allotted for small businesses and

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businesses in rural areas to accrue. The measure also requires the ADOC to revise the Program rules to streamline the application process.

contractors; violations; sales tax (S.B. 1592) – Chapter 174

Requires the court to order a person who is convicted of acting as a contractor without a license, a wrongful or fraudulent act that results in the substantial injury of another person or assisting a person to evade the contractor regulations and requirements, and who is sentenced to probation, to pay, as conditions of probation, all transaction privilege tax or use tax amounts that arise from the acts or omissions constituting the violation and that are due. Permits the Department of Revenue to release confidential tax information to the prosecutor for the purpose of sentencing the convicted person.

centennial; UPS (S.C.R. 1023)

Expresses the Legislature's desire to commemorate and honor the United Parcel Service of America on the occasion of its 100th anniversary and to recognize its economic and philanthropic contributions to the citizens of Arizona.

~~school accountability; small schools; definition~~ (NOW: residential mortgage fraud) (H.B. 2040) – Chapter 243

Establishes the crime of residential mortgage fraud as a class 4 felony, except that engaging or participating in a pattern of residential mortgage fraud is a class 2 felony.

~~state buildings; technical correction~~ (NOW: corporate dissolution; cancellation; reinstatement) (H.B. 2050) – Chapter 110

Extends, from three to six years, the time period during which a foreign corporation or a foreign nonprofit corporation whose grant of authority to transact business is revoked and a nonprofit corporation or limited liability company that is administratively dissolved may apply to the Arizona Corporation Commission for reinstatement.

public service corporation; surety; fund (H.B. 2085) – Chapter 3

Establishes the Utility Surety Fund (Fund) within the Arizona Corporation Commission (ACC) for the benefit of customers of a public service corporation who incur a loss of services or commodities or for deposit support. The measure requires the ACC, if it finds that a public service corporation is in default of the terms and conditions of an ACC order that requires a performance bond, irrevocable letter of credit or other surety and the ACC exercises its rights under the bond, letter of credit or surety, to deposit all monies collected into the Fund.

real estate education (H.B. 2110) – Chapter 9

Permits the Commissioner of the Arizona Department of Real Estate (ADRE) to develop, sponsor or hold educational seminars and workshops for the benefit of licensees and prohibits the ADRE from creating, endorsing or sponsoring any other activity that a licensee may legally perform in a way that constitutes competition with the private sector, with some exceptions. Makes multiple changes relating to real estate schools, course approval and offerings, and instructor approval, including prescribing time frames for course approval and automatically granting provisional course

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approval under certain circumstances. Specifies that a school is responsible for the professional administration and teaching of courses offered and that the ADRE maintains its ability to withdraw or deny certification or approval of schools, courses or instructors.

corporation and LLC omnibus (H.B. 2111) – Chapter 4

Permits the electronic submission of documents to the Arizona Corporation Commission (ACC) for filing and establishes that various fees that the ACC collects are nonrefundable. Specifies when the time frame begins for the publishing of specified documents and the filing of an affidavit evidencing the publication.

Permits a person to apply to the ACC for a Certificate of Good Standing for a limited liability company (LLC). Requires the articles of merger or consolidation of an LLC to include any amendments to the articles of organization of the surviving LLC and requires the publication of amended articles of merger. Modifies when the separate existence of a dissolved LLC terminates and makes changes to the activities in which an LLC may engage after its dissolution.

worker's compensation; lump sum payment (H.B. 2185) – Chapter 12

Retroactive to July 1, 2007, increases, from \$50,000 to \$150,000, the maximum lump sum payment that may be awarded to an injured employee for commutation of workers' compensation for an unscheduled injury that results in permanent partial or total disability, with the consent of the liable carrier.

workers' compensation; third person liability (H.B. 2194) – Chapter 116

Requires an employee, who is entitled to workers' compensation and who is injured or killed by the negligence or wrongdoing of another person not in the same employ, or the employee's dependents in the case of the employee's death, to notify the insurance carrier or the self-insured employer, in writing, of the intention to bring an action against the other person and of all pleadings and rulings concerning the status of the action. The insurance carrier or the self-insured employer may intervene at any time to protect the insurance carrier's or the self-insured employer's interests.

Permits the insurance carrier or self-insured employer to institute an action against the other person if the employee or the employee's dependents fail to fully prosecute the claim and the action is dismissed, in addition to if the employee or the employee's dependents do not institute an action within one year after the cause of action accrues as already permitted by statute. The measure also permits the insurance carrier or self-insured employer to file an action prior to one year after the cause of action accrues if the statute of limitations is one year.

Grants the Industrial Commission of Arizona the same rights as an insurance carrier or self-insured employer for the purposes of recovering compensation and benefits from the other person.

workers' compensation; death benefits (H.B. 2195) – Chapter 271

Increases, to \$3,000 for employees injured in 2008 and \$3,600 for employees injured in 2009, the cap on the average monthly wage that may be used to calculate workers' compensation benefits and requires the Industrial Commission of Arizona, beginning August 1, 2009, to adjust the cap annually. Increases the amount of death benefits paid to the surviving children of a deceased employee under specified circumstances.

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~~amusement ride safety; administration~~ (NOW: contractors; requirements; construction contracts) (H.B. 2200) – Chapter 224

Classifies as a class 1 misdemeanor, and permits the Registrar of Contractors (ROC) to suspend or revoke a contractor's license for, recklessly combining or conspiring with any person with the intent to evade the laws pertaining to contractors. Specifies when the two-year period for the filing of a written complaint with the ROC begins. Beginning January 1, 2008, requires the elements that currently must be included in a contract for more than \$1,000 and less than \$150,000 between a contractor and the property owner to be included in all contracts for more than \$1,000, as well as additional information pertaining to the property owner's right to file a complaint with the ROC.

~~college courses; high school credit~~ (NOW: minimum wage; employers; liability) (H.B. 2245) – Chapter 272

SEE APPROPRIATIONS COMMITTEE.

state plumbing code (H.B. 2252) – Chapter 15

Repeals the State Uniform Plumbing Code and permits a county board of supervisors to adopt and enforce a plumbing code for unincorporated areas.

driver license information; retailer use (H.B. 2291) – Chapter 208

Enumerates the purposes for which a retailer may retain and use information from a customer's driver license, including the parties to whom the information may be disclosed, and prohibits a retailer from transmitting the information to any other party, except law enforcement agencies. Designates an offense as a violation of the Consumer Fraud Act and prescribes the maximum civil penalty for each violation. Either the county attorney in the county in which the violation occurs or the Attorney General may enforce the provisions. Allows the county attorney to obtain injunctive relief and recover costs and attorney fees.

~~shooting ranges; rezoning; noise attenuation~~ (NOW: scrap metal dealers; records) (H.B. 2314) – Chapter 186

Effective May 8, 2007, expands the definition of aggravated criminal damage to include intentionally or recklessly, without permission of the owner, defacing, damaging or tampering with any utility or agricultural infrastructure or property, construction site or existing structure for the purpose of obtaining nonferrous metals and designates this form of aggravated criminal damage as a class 3, 4 or 5 felony, depending on the amount of damage.

Makes various changes, beginning September 1, 2007, to the statutes relating to scrap metal dealers (dealer), including: 1) increases the amount of information that a dealer must record and retain for transactions that exceed \$25; 2) prohibits, for transactions involving industrial accounts that do not preregister employees, copper or aluminum wire with a specified diameter, and for all scrap metal transactions of \$300 or more, a dealer from providing payment at the time of the transaction and requires the dealer to make payment by mailing a check or money order to a physical address; and 3) requires scrap metal dealers to deliver a record of the receipt of scrap metal to the Department of Public Safety, as opposed to local law enforcement. Additionally, the measure requires scrap metal sellers to be at least 16 years of age and prohibits sellers from participating in more than one cash transaction per day. Transactions involving aluminum beverage containers and

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materials consisting of a metal product in its original manufactured form that is comprised of no more than 20 percent by weight nonferrous metal are exempted from the limitations and requirements.

~~motion picture tax credit; accountability~~ (NOW: tax credit accountability; motion picture)
(H.B. 2322) – Chapter 225

Beginning January 1, 2008, extends the letter of qualification for eligibility for the motion picture production tax incentives to 24 months. Requires a production to begin within 90 days and the production company to spend at least \$250,000 before qualifying for a tax credit. The tax credit for eligible production costs is increased to 20 percent for productions of \$250,000 to \$1 million and to 30 percent for productions of over \$1 million. The maximum tax credit per motion picture is also increased, from \$5 million to \$7 million in 2008, \$8 million in 2009 and \$9 million thereafter. Unused credits are set aside and used to pay appeals. Any unused credit balance is added to the cap for the next calendar year. Beginning with the 2008 income tax credit allocation, five percent of the annual income tax credit cap is reserved for commercial advertisements and music video productions.

A motion picture production company is authorized to apply for approval of the production before a viewable copy of the production is available if the production company submits a letter of credit, payable to the Department of Revenue (DOR). The letter of credit must stipulate that the issuer will pay the full face value of the income tax credits within two days after receiving a written disqualification from the Arizona Department of Commerce (ADOC). A motion picture production company or motion picture infrastructure project investor may enter into a limited managed audit agreement with DOR to confirm the amount of the tax credit after the production company or investor receives ADOC postcertification. Provides criteria and specifications for entering into the managed audit agreements.

Establishes, for tax years 2008 through 2010, a transferable individual and corporate income tax credit for motion infrastructure project costs in Arizona based on the following scale: 1) \$5 million in 2008 for soundstage projects; 2) \$5 million in 2009 for soundstage projects and \$7 million in 2009 for associated support and augmentation facilities if at least one soundstage project was certified in 2008; and 3) \$5 million in 2010 and \$9 million for associated support and augmentation facilities in 2010 if one or more soundstage projects were certified in 2008 or 2009. The amount of the credit is 15 percent of the total base investment in the project during the taxable year and a company may not receive income tax credits in excess of \$3 million per motion picture production. Taxpayers may transfer or sell all or part of any unclaimed credits. The transferred credits are subject to the same conditions as the original taxpayer.

Allocates \$180,000 of the credit cap to the ADOC in FY 2007-2008 for up to two full-time equivalent positions to administer the motion picture tax incentive program.

hazard disclosures; reports (H.B. 2323) – Chapter 76

Permits a third party to provide a hazards disclosure report (report) to the buyer of real property, in addition to the seller of the property as already permitted, and stipulates that no person is required to provide or purchase a report. Modifies requirements pertaining to the provision of reports, including those related to: 1) the conditions that must be disclosed in the reports; 2) insurance coverage; and 3) indemnification for an error, inaccuracy or omission. Stipulates that the listing of a condition in statute or in a report does not affect the materiality of that condition.

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Prohibits a third party provider from representing: 1) that the purchase of a report is required or 2) that the provider offers protection from liability or provides information about property conditions that are not the subject of the report or that are not within the current ability of the third party provider to provide. Classifies the failure to obtain the required insurance or the commission of a misrepresentation as a class 1 misdemeanor subject to enforcement through private action and prosecution by the Attorney General or the appropriate county attorney. A provider of a report who is found guilty of committing a misrepresentation is liable for damages of not more than \$2,000 per occurrence, in addition to any other remedies provided by law.

spirituous liquor; omnibus (H.B. 2391) – Chapter 187

Makes numerous changes to the statutes governing spirituous liquor. The major provisions include:

Licensed Premises – Permits a licensed premises to include a patio that is separated by not more than 30 feet from the remainder of the premises by a walkway or driveway.

Restaurant Licenses – Permits the Director of the Department of Liquor Licenses and Control to require a licensee to surrender a restaurant license, as opposed to revoke the license, if the licensee ceases to meet the requirements pertaining to food service and kitchen facilities. Requires the Director to deem a restaurant license surrendered, as opposed to revoked, if food sales account for less than 30 percent of the restaurant's gross revenue.

Age Verification – Specifies a new procedure that a licensee, employee or other person, who questions or has reason to question that a person is under the legal drinking age, must follow. A licensee or employee is not required to employ the procedure if the licensee or employee already completed the procedure for the person during that same visit. Presumes that a licensee or employee who has not retained a record of a person's identification did not follow the procedure and knows that the person entering the licensed premises is under the legal drinking age. Proof that a licensee or employee employed the procedure, but did not retain a record, is an affirmative defense for an alleged violation, unless the licensee or employee has actual knowledge that the person is under the legal drinking age. Admitting a person into any portion of a licensed premises in violation of the law, if the licensee or employee has actual knowledge that the person is under the legal drinking age, is a class 1 misdemeanor subject to the suspension of driving privileges.

Penalties for Underage Persons – Permits the court to suspend, for up to 180 days, the driving privilege of a person who is under age 18 on receiving the record of the person's first conviction for buying, receiving, possessing or consuming spirituous liquor. Decreases, from not less than six months to not more than six months, the length of time for which the Arizona Department of Transportation must suspend the driver license, nonoperating identification license or driving privilege of a person who is under the legal drinking age and who is convicted of using any license to obtain spirituous liquor or enter a licensed premises.

workers' compensation; premium reduction (H.B. 2405) – Chapter 148

Authorizes a workers' compensation insurance carrier to reduce the amount of premiums paid by an employer by up to five percent if the insured employer: 1) complies with the prescribed drug testing policy requirements; 2) conducts drug testing of prospective employees and of an employee after the employee has been injured; and 3) allows the insurance carrier to have access to the drug testing results.

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unlawfully obtaining communication records (NOW: communication service records; unauthorized use) (H.B. 2726) – Chapter 210

Classifies knowingly procuring, selling or receiving a communication service record or public utility record of any Arizona resident without the resident's authorization or by fraudulent means as a violation of the Consumer Fraud Act and a class 1 misdemeanor, with some exceptions. Prohibits the use of any personal information contained in a telephone record, public utility record or communication service record that is obtained without authorization, or fraudulently, in any judicial, administrative, legislative or other proceeding, unless the information is proof in an action or prosecution under this measure or its use is otherwise authorized by law. The measure specifies the relief that a customer whose records are disclosed or procured without authorization or fraudulently may recover in a civil action. Disclosure of telephone records, public utility records and communication service records to the Arizona Corporation Commission for use in the performance of its duties is permitted.

fair and legal employment act (H.B. 2779) – Chapter 279

SEE APPROPRIATIONS COMMITTEE.